

07 CIV 8236

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ROSA MORALES,

Plaintiff,

-against -

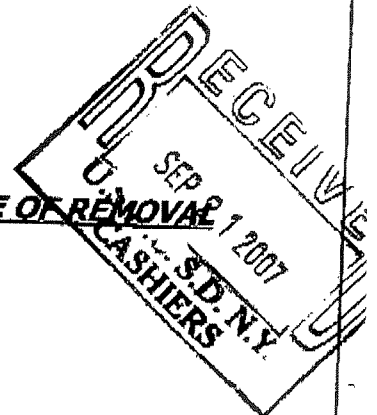
PATHMARK STORES, INC.,

Defendant.

-----X

NOTICE OF REMOVAL

CV



TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN AND SOUTHERN DISTRICT OF NEW YORK

This Notice of Removal on behalf of defendant respectfully shows:

1. An action was commenced against defendant in the Supreme Court of the State of New York, Bronx County on November 14, 2006 with subsequent service on the defendant through the Secretary of State on November 30, 2006, which action is entitled above. According to the complaint, plaintiff demands judgment "in such amount as exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction"...Copies of the Summons and Complaint are attached hereto and marked as **Exhibit "A"**.
2. Defendant timely interposed its answer to the Complaint. A copy of the Answer is annexed as **Exhibit "B"**.
3. On December 20, 2006, defendant served a CPLR §3017(c) "Request for a Supplemental Demand" requiring plaintiff to set forth the total damages

to which he deems himself entitled. A copy of the "Request for Supplemental Demand" is annexed as **Exhibit "C"**.

4. Plaintiff's response to defendant's "Request for Supplemental Demand" dated September 17, 2007. A copy is annexed as **Exhibit "D"**. In his response, plaintiff demands judgment against the defendant in the amount of \$2,001,685.23.

5. The above described action is now one in which this Court has original jurisdiction under the provisions of 28 U.S.C. 1332 and is one which may be removed to this Court by petitioner, pursuant to the provisions of 28 U.S.C. 1441 in that the matter in controversy exceeds the jurisdictional minimum for federal diversity actions exclusive of interest and costs.

6. Plaintiff was, at the time this action was commenced, and still is, a citizen of the State of New York and resides in Bronx County. Defendant was, at the time this action was commenced, and still is, a corporation organized under the laws of the State of Delaware and having its principal place of business in the State of New Jersey.

WHEREFORE, defendant requests that the action now pending against it in the Supreme Court of the State of New York, Bronx County, be removed therefrom to this Court.

Dated: New York, New York
September 21, 2007

Yours etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN
Attorneys for Defendant
Office & P.O. Address
69 East Jericho Turnpike
Mineola, New York 11501
516-742-3470

BY:



HENRY M. PRIMAVERA
A Member of the Firm

TO: STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 E. Tremont Avenue
Bronx, New York 10461
(718) 828-1400

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

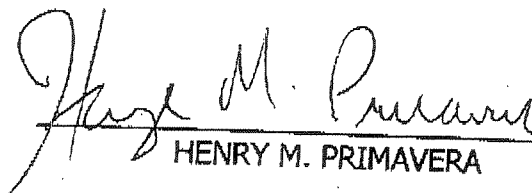
I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, the attorneys of record for the defendant PATHMARK STORES, INC. in the within action;

I have read the foregoing NOTICE OF REMOVAL and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York
September 21, 2007


HENRY M. PRIMAVERA

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

Index No.:

23183-06

ROSA MORALES,

Plaintiff(s),

Plaintiff designates
BRONX County
as the place of venue

-against-

The basis of venue is
Plaintiff's Residence

PATHMARK STORES, INC.,

Defendant(s),

SUMMONS

Plaintiff resides at
1230 Croes Avenue
County of **BRONX**

To The Above Named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you be default for the relief demanded in the complaint.

Dated: Bronx, New York
November 14, 2006

STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

Defendant's Address:
PATHMARK STORES, INC.
200 MILIK STREET
CARTERET, NJ 07008

2006 NOV 15 PM 2:27
CLERK OF COURT
COUNTY OF BRONX

RECEIVED

**YOU SHOULD IMMEDIATELY BRING THESE DOCUMENTS TO YOUR
ATTORNEY OR INSURANCE COMPANY**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

Index No.:

ROSA MORALES,

Plaintiff(s),

VERIFIED COMPLAINT

-against-

PATHMARK STORES, INC.,

Defendant(s),

Plaintiff complaining of the defendants, by her attorneys, **STILLMAN & STILLMAN, P.C.**, respectfully shows to this Court and alleges:

1. That at all times as stated herein, plaintiff **ROSA MORALES**, was and still is a resident of the County of Bronx, City and State of New York.
2. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, was and still is a corporation duly licensed and existing under and by virtue of the laws of the City and State of New York.
3. That on or about August 21, 2006, upon information and belief, the sidewalk at about 1720 Eastchester Road, Bronx, York, New York, was and still is a public walkway.
4. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, owned the building and premises located at 1720 Eastchester Road, Bronx, New York.
5. That at all times as stated herein, upon information and belief, defendant, **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees were negligent in the ownership of the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.

2006 NOV 15 PM 2:27
COUNTY CLERK
BRONX COUNTY

RECEIVED

6. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees operated the building and premises located at 1720 Eastchester Road, Bronx, New York.
7. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees were negligent in the operation of the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.
8. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees controlled the building and premises located at 1720 Eastchester Road, Bronx, New York.
9. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees were negligent in the control of the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.
10. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees maintained the building and premises located at 1720 Eastchester Road, Bronx, New York.
11. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees were negligent in the maintenance of the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.

12. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees managed the building and premises located at 1720 Eastchester Road, Bronx, New York.
13. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees were negligent in the management of the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.
14. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees had a duty to inspect the building and premises located at 1720 Eastchester Road, Bronx, New York, and more specifically the sidewalk in front of and adjacent thereto.
15. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees were negligent in the inspection of the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.
16. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees had a duty to repair the building and premises located at 1720 Eastchester Road, Bronx, New York, and more specifically the sidewalk in front of and adjacent thereto.

17. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees and/or assigns were negligent in the repair of the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.
18. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees had a duty to maintain the building and premises located at 1720 Eastchester Road, Bronx, New York, and more specifically the sidewalk in front of and adjacent thereto.
19. That at all times as stated herein, upon information and belief, defendant **PATHMARK STORES, INC.**, its agents, servants, contractors and/or employees and/or assigns were negligent in their duty to maintain the aforementioned building and premises, and more specifically the sidewalk in front of and adjacent thereto.
20. That the aforementioned occurrence was caused as a result of the negligence of the defendants as aforesaid and without any negligence on the part of the plaintiff contributing thereto. Said negligence of defendant consisted of and included failing to repair the sidewalk as stated herein, which was raised, cracked, mislevelled, and uneven; in failing to maintain said sidewalk in a reasonably safe condition; in failing to inspect and repair said sidewalk and allowing said sidewalk to remain in a hazardous and dangerous condition; and to be and become a trap and danger to plaintiff causing these injuries.

21. That solely as a result of the negligence of the defendants as stated herein, plaintiff, **ROSA MORALES**, sustained serious, severe and permanent injuries and disabilities, pain and suffering and loss of enjoyment of life; was rendered sick, sore, lame and disabled; sustained severe mental anguish, nervous shock and great physical pain; was compelled to obtain medical treatment and will be compelled to undergo further medical treatment for an undetermined amount of time and has been damaged accordingly in such amount exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, or such amount as may be determined by a court.

WHEREFORE, plaintiff **ROSA MORALES**, demands judgment against the defendants stated herein, in such amount as exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, or such amount as may be determined by a Court and/or jury, together with costs and disbursements of this action.

Dated: Bronx, New York
November 14, 2006

STILLMAN & STILLMAN, P.C.

ROBERT A. BIRNBAUM
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

STATE OF NEW YORK)
COUNTY OF BRONX) ss:

INDIVIDUAL VERIFICATION

The undersigned, being duly sworn, deposes and says that the deponent is the plaintiff in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

✓ Rosa A. Morales

Sworn to before me this
14 day of November, 2006

NOTARY PUBLIC

ROBERT A. BIRNBAUM
Notary Public, State of New York
No. 4925118
Qualified in New York County
Commission Expires Feb. 28 10

Law Offices Of
STILLMAN & STILLMAN, P.C., 2622 East Tremont Avenue, Bronx, New York 10461

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

=====X

ROSA MORALES,

Plaintiff,

Index #23183/06

-against-

VERIFIED ANSWER

PATHMARK STORES, INC.,

Defendant.

=====X

Defendant, PATHMARK STORES, INC., by its attorneys, KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, answering the Complaint of the plaintiff, sets forth upon information and belief the following:

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "1" and "3" of the Complaint.

SECOND: Defendant denies each and every allegation contained in paragraphs "2", "4", "5", "7", "8", "9", "10", "11", "12", "13", "15", "17", "19", "20" and "21" of the Complaint.

THIRD: Defendant denies each and every allegation contained in paragraph "6" of the Complaint except admits that PATHMARK STORES, INC. operated a "Pathmark Supermarket" located at 1720 Eastchester Road, Bronx, New York.

FOURTH: Defendant denies each and every allegation contained in paragraphs "14", "16" and "18" of the Complaint and respectfully refers all questions of law to the determination of the court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FIFTH: Upon information and belief, the injuries sustained by plaintiff and any alleged damages were caused in whole or in part, or were contributed to by reason of the negligence, want of care, carelessness, assumption or risk, or other culpable conduct on the part of the plaintiff and by reason of the foregoing, the damages allegedly attributable or otherwise recoverable herein should be reduced proportionately.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SIXTH: That the plaintiff could, with due diligence, have obtained personal jurisdiction over tortfeasors not a party to this lawsuit. Therefore, the culpability of these missing or absent tortfeasors may be computed into the apportionment of total culpability causing the subject occurrence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SEVENTH: This answering defendant's equitable share of the total liability assigned to all persons liable, if any, if fifty percent (50%) or less.

WHEREFORE, the defendant PATHMARK STORES, INC. demands judgment dismissing plaintiff's Verified Complaint together with the costs and disbursements of this action.

Dated: Mineola, New York
December 20, 2006

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN

Attorneys for Defendant
Office & P.O. Address
69 East Jericho Turnpike
Mineola, New York 11501

BY: 

HENRY M. PRIMAVERA

TO: STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK)

SS:

COUNTY OF NASSAU)

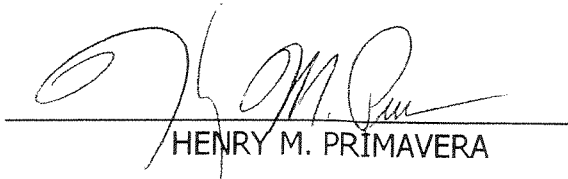
I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, the attorneys of record for the defendant PATHMARK STORES, INC. in the within action;

I have read the foregoing VERIFIED ANSWER and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York
December 20, 2006


HENRY M. PRIMAVERA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

ROSA MORALES,

Index #23183/06

Plaintiff,

-against-

**CPLR Section 3017(c)
REQUEST FOR A
SUPPLEMENTAL DEMAND**

PATHMARK STORES, INC.,

Defendant.

-----X

COUNSELORS:

PLEASE TAKE NOTICE, that pursuant to CPLR Section 3017(c) defendant, PATHMARK STORES, INC., hereby demand that within fifteen (15) days plaintiff, ROSA MORALES, provide a Supplemental Demand setting forth the total damages to which plaintiff deems herself entitled.

PLEASE TAKE FURTHER NOTICE, that in the event the Supplemental Demand is not served within fifteen (15) days of this request, defendant shall move for an Order requiring plaintiff's compliance.

Dated: Mineola, New York
December 20, 2006

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN, LLP

Attorneys for Defendant

Office & P.O. Address

69 East Jericho Turnpike

Mineola, New York 11501

(516) 742-3470

BY: 

HENRY M. PRIMAVERA

TO: STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ROSA MORALES,

Plaintiff,

Index #23183/06

-against-

Affidavit of Service

PATHMARK STORES, INC.,

Defendant.
-----X

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

LORETTA GRECO, being duly sworn, deposes and says: That your deponent is not a party to the action and is over the age of 18 years old and on December 20, 2006 served the within VERIFIED ANSWER, DEMAND FOR A VERIFIED BILL OF PARTICULARS, COMBINED DEMAND, NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION AND SUPPLEMENTAL DEMAND upon the attorneys for the respective parties to this action as follows:

TO: STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


LORETTA GRECO

Sworn to before me this
December 20, 2006


NOTARY PUBLIC

ELIZABETH PENAGOS
Notary Public, State of New York
No. 01PE5051168
Qualified in Nassau County
Commission Expires Oct. 30, 2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ROSA MORALES,

Plaintiff (s),

Index #: 23183/06

-against-

PATHMARK STORES, INC.

Defendant (s)

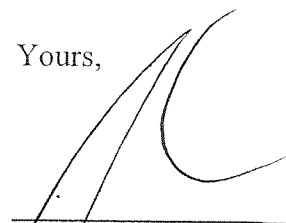
**RESPONSE TO
SUPPLEMENTAL
DEMAND**

COUNSELORS:

PLEASE TAKE FURTHER NOTICE that the plaintiff by her attorneys STILLMAN & STILLMAN, P.C., hereby response to defendant (s) supplemental demand for setting forth the total damages to which plaintiff deems herself entitled is TWO MILLIONS ONE THOUSAND SIX HUNDRED EIGHTY FIVE DOLLARS AND TWENTY THREE CENTS.

Dated: September 17, 2007
Bronx, New York

Yours,



ROBERT A. BIRNBAUM
STILLMAN & STILLMAN, P.C.
2622 E. Tremont Avenue
Bronx, New York 10461
(718) 828-1400

TO: KRAL, CLERKIN, REMOND, RYAN
PERRY & GIRVAN, LLP
Attorneys for Defendant (s)
Pathmark Stores, Inc.
69 East Jericho Turnpike
Mineola, NY 11501
(516) 742-3470

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ROSA MORALES,

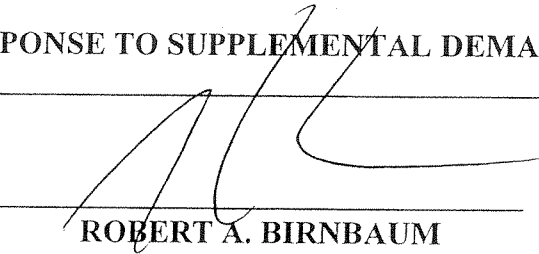
Plaintiff (s)

-against-

PATHMARK STORES INC.,

Defendant (s)

RESPONSE TO SUPPLEMENTAL DEMAND


ROBERT A. BIRNBAUM
STILLMAN & STILLMAN, P.C.
2622 EAST TREMONT AVENUE
BRONX, NY 10461
(718) 828-1400

TO: **KRAL, CLERKIN, REMOND, RYAN**
PERRY & GIRVAN, LLP
Attorneys for Defendant (s)
Pathmark Stores, Inc.
69 East Jericho Turnpike
Mineola, NY 11501
(516) 742-3470

STATE OF NEW YORK
COUNTY OF BRONX

The undersigned being hereby sworn says: I am not a party to this action am over 18 years of age. I reside at BRONX, NEW YORK.
On _____ I served the within response upon the attorneys appearing above at the address indicated above by depositing a true copy of the hereof enclosed within upon the attorneys appearing above at the address indicated above by depositing a true copy hereof enclosed in a post paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
day of September, 2007

YESSENIA ARIAS

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROSA MORALES,

Plaintiff,

-against-

Affidavit of Service

PATHMARK STORES, INC.,

Defendant.
-----X

STATE OF NEW YORK)


) ss.:

COUNTY OF NASSAU)

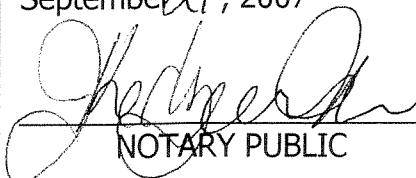
LORETTA GRECO, being duly sworn, deposes and says: That your deponent is not a party to the action and is over the age of 18 years old and on September 21, 2007 served the within NOTICE OF REMOVAL upon the attorneys for the respective parties to this action as follows:

TO: STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


LORETTA GRECO

Sworn to before me this
September 21, 2007


NOTARY PUBLIC

JOYCE KEDZIERSKI
Notary Public, State of New York
No. 01KE6099771
Qualified in Nassau County
Commission Expires October 6, 2007

ROSA MORALES,

Plaintiff,

-against-

PATHMARK STORES, INC.,

Defendant.

NOTICE OF REMOVAL

KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP
PATHMARK STORES, INC.

Attorneys for

69 EAST JERICHO TURNPIKE
MINEOLA, NEW YORK 11501
(516) 742-3470

§2103 (b) (5) Notice: Service of Papers by Electronic Means is Not Accepted

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated:

Signature.....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

20

☐

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,
at
on

20

, at

M.

Dated:

KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP

Attorneys for

69 EAST JERICHO TURNPIKE
MINEOLA, NEW YORK 11501

To:

Attorney(s) for